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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 511 (SHS)

5 JUAN CASTILLO,

6 Defendant.

Sentence

7 -----x

8 New York, N.Y.
9 December 11 , 2018
2:45 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 BY: LAUREN B. SCHORR

Assistant United States Attorney

17 JUSTINE HARRIS

18 HEATHER HAN

Attorneys for Defendant

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(Case called)

MS. SCHORR: Good afternoon, your Honor.

Lauren Schorr, for the government.

THE COURT: Good afternoon.

MS. HARRIS: Good afternoon, your Honor. Justine Harris, for Mr. Castillo. I apologize, Judge. My voice is still recovering from a chest cold. If I could sit down while speaking so that I am closer to the microphone?

THE COURT: Of course.

MS. HARRIS: With me, your Honor, is Heather Han from my office, and Mr. Castillo is on my left.

THE COURT: Of course. Welcome to all of you.

Please be seated. This is a continuation of the sentencing procedure which we started on October 25. I took it through the normal procedures for sentencing. In essence the only thing left is the actual sentence, because I wanted to get additional submissions from the parties and I do have an additional submission from Sher Tremonte for the defense, dated November 15 recommending a particular alternative to incarceration, which has an attachment. The attachment is a letter from Abraham House. I believe that's the only additional written information I have.

Government, did you submit anything, or did you want to say anything?

MS. SCHORR: We didn't, your Honor. We generally

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1 would rest on our prior representations at the last proceeding.

2 THE COURT: All right.

3 Ms. Harris, is there anything that you wanted to add
4 to your presentation? I have already given the defendant an
5 opportunity to speak.

6 MS. HARRIS: Your Honor, I think we, both parties,
7 spoke at great length at the last sentencing hearing, and I
8 don't have I think really much qualitatively to add.

9 I would be happy to discuss any particulars about the
10 Abraham House or any questions that your Honor might have,
11 because I have worked with them in the past and I know that
12 they have experience with the probation department in this
13 district. So I would be happy to discuss any particulars
14 further should your Honor wish.

15 The only other sort of additional thought I had in
16 reviewing the materials and thinking through the sentencing
17 today was just again how similar in many ways this case is to
18 the one confronted by the Supreme Court in *Gall*. There, as
19 your Honor knows, the defendant at the time of the criminal
20 conduct was young, 21. Here, Mr. Castillo was 18.

21 There were others involved in the criminal conduct in
22 *Gall*. They received terms of imprisonment. But because the
23 defendant in *Gall* had achieved what the district court and the
24 courts above conceded was permanent and transformative
25 rehabilitation, had left the conspiracy, gone to college, years

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1 had passed, that a sentence of probation was appropriate, and
2 that sentence was upheld and affirmed ultimately by the Supreme
3 Court.

4 In addressing some of the very same concerns that the
5 government had raised and I know the Court was concerned with
6 as well is the notion that this lenient, a sentence of
7 probation or a sentence that imposes alternatives would be
8 perceived as lenient, the court said the following, and it's
9 quoting actually from the district court in the case: "A
10 sentence of imprisonment may work to promote not respect but
11 derision of the law if the law as viewed as merely a means to
12 dispense harsh punishment without taking into account the real
13 conduct and circumstances involved in sentencing."

14 I am not suggesting that that is what the Court is
15 about to do here, but certainly, with all the other sentencing
16 factors really addressed -- rehabilitation, incapacitation, is
17 it needed? Individual deterrence, is it needed? -- there's
18 really no empirical basis for general deterrence. What's left
19 is the idea of a just punishment, promoting respect for the
20 law, and given the particular facts of this case --

21 THE COURT: Yes. But as we discussed at the end of
22 the sentencing proceeding, and as I think I indicated -- I
23 reread the transcript of that October 25 sentencing
24 proceeding -- I am concerned about keeping the relative
25 positions appropriate within this conspiracy.

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1 MS. HARRIS: Your Honor, they had the same problem in
2 *Gall*. The individuals, you know, who were involved in the
3 conduct, there were other individuals, received terms of
4 imprisonment of 30 and 37 months.

5 In fact, just following the quote that I read to your
6 Honor, they addressed the question about unwarranted
7 disparities and say it would be also a question of -- to give
8 similar sentences would result in unwarranted similarities
9 between defendants who are differently and uniquely situated.

10 So, I think the *Gall* precedent says -- I mean really
11 says to your Honor, that, yes, obviously we take into account
12 the relative positions in the criminal conduct and the relative
13 culpability of the individuals, but we also have to take into
14 account what their individual circumstances are. And if one
15 defendant has made a profound transformation in their lives in
16 a way that warrants a substantially different sentence, the
17 mere fact that they were all in the same criminal conduct
18 together or similarly situated seven years earlier does not
19 trump the need to consider those individuals' circumstances and
20 recognize the individual who he is now on the day of
21 sentencing, an individual who has been a stay-at-home father
22 essentially for the last couple of years and has turned his
23 life around. I think that the successful completion of
24 probation and his job prospects once his case is complete are
25 all a testament to that.

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1 So what's left, and your Honor said what is left is
2 the idea of promoting respect for the law or some sort of just
3 punishment, recognizing the seriousness of the offense.

4 THE COURT: That was part of what Ms. Estes was
5 arguing last time as well, but on behalf of the government.
6 That is to say, I think her quote is everybody in the Bronx
7 knows about these sentences, each and every one, and to suggest
8 that somebody was involved in three shootings, including one
9 that he did himself and injured somebody, were to get as it
10 were no time would not promote respect for the law.

11 MS. HARRIS: We all looked at the transcript, your
12 Honor. I think you, the Court, made my argument and said, If I
13 were Justine Harris, I would say that in fact this kind of
14 sentence that would recognize that doesn't narrowly telescope
15 only the offense conduct, but, as consistent with the statute,
16 looks not only at the offense conduct, but the individual
17 personal history and characteristics and sentences Mr. Castillo
18 not just for his crime but for the person who he has become;
19 that especially in communities where it's perceived often that
20 sentences of imprisonment and harsh sentences of imprisonment
21 are often imposed over time and over history mechanically or in
22 a way that is perceived as not sufficiently merciful, that a
23 sentence that does require something of Mr. Castillo -- that's
24 why we worked really hard, your Honor, to propose and I think
25 we've proposed sort of a three-tiered punishment in a sense

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1 that does require something of him in both time, energy,
2 emotion, mental work. You know, that does require something of
3 him, but allows him to remain in the community, to help make
4 amends to his community, and, importantly, to continue being
5 the father that he has worked very hard to be.

6 I know in many, many cases we say, or courts say,
7 look, you know, it is all sad and terrible for the family and
8 children, but the defendant should have thought about that
9 before they committed the crime. But here it is a very
10 different situation because of the timing of the prosecution,
11 your Honor.

12 He wasn't a father. He wasn't even -- he was 18 years
13 old. Seven years have passed. He became a father two and a
14 half years ago, and he was well on his way to successfully
15 completing probation and his life was ahead of him without the
16 notion that there was a threat of prosecution.

17 So to fashion a sentence that would allow him to
18 remain in the community, to continue being a father we think
19 would be for the community and I think this is consistent --
20 regardless of the anecdotal evidence that Ms. Estes offered --
21 consistent with the academic literature and the penological
22 literature, that that kind of sentence that takes into account
23 the whole person and forces amends but allows him to remain in
24 the community and help rebuild the community and be a father
25 would be actually more meaningful and promote more respect for

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1 the law than a sentence that just says, this happens, it
2 doesn't matter if it was seven years ago, you still, no matter
3 what, no matter how perfect of a Boy Scout you are now, you
4 still have to go to jail because that's the law, that's the
5 law.

6 I think this is a case, given the particular facts and
7 circumstances, that justifies -- I understand it is an
8 extraordinary request, but thinking outside of the box in a
9 sense about fashioning something that's different and it merits
10 a different approach.

11 The three tiers, with the Abraham House as one
12 component -- and I had a client go through the MRT therapy,
13 which is something I have only heard in the criminal justice
14 system, and it is a cognitive behavioral therapy model for
15 individuals who break the law basically. As described in the
16 attachment from Abraham House, it focuses on really developing
17 sort of different kinds of moral reasoning and changes in
18 behavior, which is, Mr. Castillo said, like going intensive
19 therapy, group and individual. It's not easy for anyone to do.
20 He's someone who sometimes is fairly quiet in his words and not
21 that chatty, and I think forcing him to engage, not only on an
22 introspection level, which is something he's done I think more
23 naturally over the last couple of years, but in a way that is
24 an improved setting and that holds him accountable with an
25 individual therapist I think is going to be a very important

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1 and substantial requirement that is imposed on him.

2 That is obviously coupled with tasks that the director
3 of the program acknowledges are penal in nature in the sense
4 that they're mandatory. Compliance is expected, and if there's
5 no compliance, they can report to the probation department.

6 And it's a long-term program. You know, the minimum
7 term of participation is a year, and many stay on for more than
8 that year.

9 We also proposed, your Honor, that, in addition to
10 that program, that Mr. Castillo, because of his connection with
11 youth, as we've said, he obviously not only has a close bond
12 with his own daughter but he has a close bond with his autistic
13 nephew, he has a close bond with the young sons of a family
14 friend who wrote letters to your Honor, and there is a friend
15 who ran a youth organization that talks in her letter about how
16 Mr. Castillo often came and volunteered at basketball
17 tournaments.

18 We believe it would be also appropriate, in addition
19 to the Abraham House requirement, to impose a community service
20 requirement focusing on youth. That is a program that the
21 probation department and Mr. Castillo could work on together.

22 Finally, your Honor, in terms of punitive sanctions,
23 while the Supreme Court has recognized that probation is
24 punishment, there are limits on your freedom, here, as your
25 Honor knows, for 15 months Mr. Castillo has been subject to a

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1 curfew. He's worn a bracelet. The Court could extend that
2 curfew, could extend those limitations for as long as the Court
3 deems necessary to really continue that sense of punishment.

4 While awaiting sentencing Mr. Castillo has basically
5 spent his time dropping off his daughter, picking her up from
6 school. He often picks up Genesis, the five-year-old,
7 basically his daughter's five-year-old aunt for whom he also
8 cares, taking care of them after school and there for either of
9 them should there be a sick day.

10 Finally, your Honor, what we do ask is that, if your
11 Honor is still considering -- and I know in fairness it was the
12 first thing you said at sentencing on October 25 and the last
13 thing you said that there is this instinctive need instinctual
14 need or sort of a need for some kind of punishment or
15 incarceration, and if your Honor is not convinced that what we
16 propose is an adequate substitute for punishment or
17 incarceration, and if incarceration or some kind of locked up
18 facility is still required or deemed required by this Court,
19 that your Honor consider imposing intermittent confinement --
20 this is important, your Honor -- as a condition of probation.

21 I did a fair bit of research on that Listserv among
22 defense lawyers, who provided some examples that I cited to
23 your Honor in the letter. The consensus is that obviously as a
24 BOP sentence intermittent confinement does not work, because
25 MDC -- BOP does not have the administrative flexibility to sort

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1 of check people in and check people out, but if it's done as a
2 condition of probation, where it is supervised by the probation
3 department, probably more easily in the setting of a halfway
4 house, that we would ask that your Honor consider using that
5 tool, another alternative tool to the traditional sentence of
6 imprisonment as an alternative, in that it will allow him to
7 begin the work process, any kind of program that your Honor
8 would require and at the same time maintain his duties to his
9 family, his community, and most importantly his daughter.

10 I obviously care very deeply about this case and I
11 would talk at great length, and I don't want to, you know,
12 repeat and tread on the Court's patience.

13 THE COURT: Thank you. I appreciate it.

14 Mr. Castillo, if you wish to say anything, you would
15 certainly have an opportunity to do so now. It is entirely up
16 to you.

17 THE DEFENDANT: Thank you, your Honor.

18 THE COURT: Speak loudly, sir.

19 THE DEFENDANT: I don't really want to repeat what I
20 said last time, but I do want to stress how remorseful I am for
21 my actions in the past. I told you before and I want to say it
22 again, my actions were wrongful to the community. I think that
23 Abraham House program is a great fit for me, it is right in the
24 community that my actions have wronged, so it will help me get
25 back to that community and my way of making amends.

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1 The drug and the alcohol testing will help me from
2 falling back into old habits if I do get a probation sentence.
3 Therapy sessions won't be easy for me at all, but I know they
4 will help me deal with things from my past and be a better man.
5 If I do get a chance to return home to my family, I want to
6 continue to mentor troubled teens so they won't end up like me.

7 Thank you.

8 THE COURT: Thank you.

9 MS. SCHORR: Your Honor, if I may, just very briefly?

10 THE COURT: Yes.

11 MS. SCHORR: Again, not to reiterate points that were
12 made by Ms. Estes at the last proceeding, but just to respond
13 briefly to Ms. Harris.

14 We reviewed the defense's submission and the programs
15 that are being offered. I would just reiterate that, looking
16 at the entirety of 3553(a) and considering the personal
17 circumstances of the defendant are quite significant, but the
18 nature and circumstances of the offense and the conduct and the
19 need to provide just punishment and respect for the law --
20 again, I won't belabor the points that were raised by
21 Ms. Estes, but I think we do believe that those factors
22 necessitate some form of incarceration here.

23 There were three shootings the defendant was involved
24 in. These are extremely violent, extremely dangerous, and
25 there is a very important message to be sent that, if you

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1 engage in that kind of conduct, even years ago, at 18, you have
2 to face a consequence for that.

3 So I just want to reiterate that point.

4 THE COURT: That was seven years ago.

5 MS. SCHORR: It was seven years ago, your Honor.

6 THE COURT: He's done -- I think it was 13 months.

7 MS. SCHORR: It was seven years ago. He did 13 months
8 on different conduct.

9 THE COURT: Related conduct. It's part and parcel.
10 There would be a credit under 5K2.23 in any event.

11 MS. SCHORR: Absolutely. Related conduct is
12 considered as part of the guidelines analysis here, and we are
13 not disputing that in any way. But I do think being involved
14 in a violent gang, being a core member of it -- recognizing, of
15 course, it was years ago. He was 18 years old; he was not 15.
16 That was still years ago, but at 18 you are treated as an
17 adult. I think being involved in three shootings, you know,
18 frankly, the defendant is lucky that only one person was
19 injured.

20 THE COURT: That is true.

21 MS. SCHORR: And, you know, perhaps specific
22 deterrence has been addressed through his prior sentence, but I
23 do think promoting respect for the law, just punishment, having
24 a sentence that is comparable to the other defendants that are
25 similarly situated to him here and general deterrence, to leave

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1 an important message in this Bronx community and other Bronx
2 communities that, you know, just because you do a shooting, you
3 get away with it for a period of time, there still has to be a
4 consequence for engaging in that kind of violence. So I just
5 wanted to reiterate those points.

6 THE COURT: All right. Thank you.

7 I am going to end where I started. I find this to be
8 a particularly difficult sentence, given the individual
9 circumstances of this defendant. He does seem to have turned
10 his life around after the 13 months on the drug sentence and
11 doing federal time.

12 I have spoken to both of his probation officers, his
13 prior one and his current one. I have also spoken to the
14 program officer in the probation department here about the
15 various programs.

16 I am going to take a chance on this defendant. I am
17 not going to make it easy, but I am not going to send him back
18 to prison now, given the substantial postrelease rehabilitation
19 by this defendant subsequent to the release from the Oetken
20 sentence.

21 He has had absolutely no run-ins with the law since
22 then. He has a new probation officer. The old one speaks
23 quite highly of him. He does seem to have turned it around. I
24 want to build on that, so I am going to be sentencing him to
25 the alternative to incarceration program in Abraham House.

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1 He's going to have to successfully complete it. As the defense
2 attorney said, there is a one-year minimum, and he can go up to
3 three years. And that involves service time, apparently not
4 just talking with troubled youth, but physical labor for about
5 six hours a week as well as that MRT therapy and vocational
6 training.

7 That will be for one to three years. It is up to the
8 Abraham House to determine whether he has successfully
9 completed the program or not, but I am going to require
10 successful completion.

11 I am going to have probation for four years. I am
12 going to add on to the Abraham House completion 80 hours of
13 community service per year of probation, with a program to be
14 worked out with his probation officer, presumably involving
15 working with youth, but that will be between this defendant,
16 the defense attorney, and the probation department.

17 I am going to require monthly progress reports to be
18 given to the probation department and then forwarded to me for
19 the first year every month, and then after that the frequency
20 will be at the discretion of his probation officer.

21 I am also going to require that there be location
22 monitoring, specifically radio frequency monitoring, for an
23 additional 12 months. I am going to waive the cost of
24 participation in location monitoring, but part of that location
25 monitoring or, in addition to the location monitoring, I am

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1 going to require that the defendant be restricted to his
2 residence every day from 7 p.m. to 6 a.m. So there is a
3 curfew.

4 And, of course, the standard and mandatory conditions.

5 I believe those are sufficient to meet the ends of
6 criminal justice system. I have considered at length all of
7 the factors in 18 U.S.C. Section 3553(a).

8 That is my determination.

9 Defendant will rise, and I will formally impose
10 sentence.

11 THE DEFENDANT: Thank you, your Honor.

12 THE COURT: Pardon me?

13 THE DEFENDANT: Thank you, your Honor.

14 THE COURT: Well, it's going to be up to you, sir, to
15 show me that I was right. As I say, I am taking a chance. I
16 think you have turned your life around, but you are going to
17 have to follow the schedule, and if you violate any term or
18 condition of supervised release, you will be back before me. I
19 want to watch your progress through the progress reports, but I
20 think you have earned a shot. I'm trying to give it to you.

21 THE DEFENDANT: Thank you, your Honor. I appreciate
22 it.

23 THE COURT: I will now impose sentence and allow the
24 parties to make any legal objections. I find that the total
25 offense level is 22, the criminal history category is III, the

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1 guideline range is 51 to 63 months. However, the defendant is
2 entitled to a credit of 12 months pursuant to United States
3 Sentencing Guideline 5K2.23.

4 I am going to vary, however, under *Booker*, *Fanfan* and
5 *Gall* for his youth, for postrelease rehabilitation under *United*
6 *States v. Pepper* and other cases.

7 I am going to impose four years of probation.

8 So, pursuant to the Sentencing Reform Act of 1984, it
9 is the judgment of this Court that the defendant, Juan
10 Castillo, successfully complete four years of probation under
11 the supervision of the probation department. His four years of
12 probation shall be served with the conditions recommend by the
13 probation department; namely, the following mandatory
14 conditions:

15 He shall not commit another, federal, state or local
16 crime;

17 He shall not illegally possess a controlled substance;

18 He shall not possess a firearm, dangerous weapon, or
19 destructive device;

20 He shall refrain from any unlawful use of a controlled
21 substance;

22 He shall submit to one drug test within 15 days of his
23 placement on probation and at least two unscheduled drug tests
24 thereafter as directed by his probation officer;

25 He shall cooperate in the collection of DNA as

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1 directed by his probation officer;

2 He also shall comply with standard conditions 1
3 through 13, plus the following special conditions:

4 He shall successfully complete the alternative to
5 incarceration program of Abraham House, to which he has already
6 been admitted. There is a place for him. He shall complete
7 all of the aspects of that program including moral reconnection
8 therapy and the service requirements of that program as well as
9 the vocational training and job requirements.

10 Another special condition is he shall fulfill 80 days
11 per year of community service for each of the four years of
12 probation, the program to be worked out with his probation
13 officer. Presumably it will be focusing on working with youth,
14 but that will be up to the defense attorney, the defendant, and
15 the probation officer.

16 I am going to require monthly progress reports to be
17 given to me by the probation department for the first year of
18 probation. After that the frequency will be at the discretion
19 of the probation officer.

20 In addition, Mr. Castillo will be monitored in the
21 form of location monitoring, that is, radio frequency
22 monitoring, for an additional 12 months, and he must abide by
23 all technology requirements. I am waiving the cost of
24 participation in the location monitoring program.

25 As part of the location monitoring program, he is

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1 restricted to his residence every day from 7 p.m. to 6 a.m.

2 I am also imposing a search requirement, which I did
3 not mention before. Mr. Castillo shall submit his person,
4 residence, place of business, vehicle, and any other premises
5 under his control to a search on the basis that his probation
6 officer has a reasonable belief that contraband or evidence of
7 any violation of a condition of probation may be found. The
8 search must be conducted at a reasonable time and in a
9 reasonable manner.

10 Failure to submit to a search by Mr. Castillo may be
11 grounds for revocation. Mr. Castillo shall inform all of the
12 residents that the premises are subject to search pursuant to
13 that condition.

14 Mr. Castillo shall report to the probation department
15 within 72 hours of the judgment being entered in this case.

16 I am not imposing a fine because I find Mr. Castillo
17 lacks the ability to pay a fine after taking into account the
18 presentence report and his lack of assets and his family
19 responsibilities.

20 I am not imposing restitution because there is no
21 victim pursuant to 18 U.S.C.3663.

22 I hereby order Mr. Castillo to pay to the United
23 States a special assessment of \$100, which is due immediately.

24 As I've said, I have varied below the guideline range
25 in this case due to youth and the substantial postrelease

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1 rehabilitation. I believe the sentence is appropriate.

2 I have factored in all of the factors in 18 U.S.C.
3 3553(a).

4 Ms. Harris, do you know of any legal reason why the
5 sentence should not be imposed as I have stated it?

6 MS. HARRIS: No, your Honor.

7 Thank you very much.

8 THE COURT: Ms. Schorr, do you?

9 MS. SCHORR: No, your Honor.

10 THE COURT: I hereby order the sentence to be imposed
11 as I have stated it.

12 Mr. Castillo, you have the right to appeal the
13 sentence I have just imposed on you, sir, and if you are unable
14 to pay the cost of an appeal, you have right to apply for leave
15 to appeal in forma pauperis.

16 Is there a limited waiver of appeal rights in the
17 plea?

18 MS. SCHORR: There is, your Honor.

19 THE COURT: What is it?

20 MS. SCHORR: I have to just -- one moment.

21 THE COURT: I assume it is 63.

22 MS. SCHORR: Exactly. Top of the guidelines.

23 THE COURT: All right.

24 Mr. Castillo, I wish to inform you that in your plea
25 agreement you agreed to waive the right to appeal the sentence,

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1 and you agreed to waive your right to collaterally attack the
2 sentence if I sentence you to 63 months' incarceration or less,
3 and I have done that. If you make a request, sir, the Clerk of
4 the Court will prepare and file a notice of appeal on your
5 behalf immediately.

6 Do you understand your appeal rights?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Government, are there any open counts or
9 underlying charges here?

10 MS. SCHORR: Yes, your Honor. The government moves to
11 dismiss any underlying indictments as to Mr. Castillo.

12 THE COURT: All right. That's granted.

13 Mr. Castillo, your attorney will tell you how
14 substantial the variance is that I've given you. As I've said,
15 I am taking a chance to you. Don't mess up. You are going to
16 be fine. I am taking a chance because I firmly believe you
17 will be fine.

18 You can thank your attorneys, you can thank yourself
19 for how you've turned your life around, and obviously your
20 family as well and the government, which I think has been very
21 fair here all around.

22 Good luck to you, sir. I hope I don't see you again.

23 THE DEFENDANT: Thank you, your Honor.

24 MS. HARRIS: Thank you very much, Judge.

25 (Adjourned)